

### **Remarks**

In the Application, the applicant submitted claims 1-23 for consideration. Claims 1-18 have been withdrawn and claims 19-23 have been elected subsequent to a telephone conversation on 6 July 2005 between Examiner Matthew A. Thexton and Jordan M. Meschkow, Attorney of Record for the applicant. Applicant hereby affirms this election. Claims 19-23 remain under consideration.

#### **For the Specification:**

This Office Action objects to the specification as failing to provide proper antecedent basis for the subject matter of claim 23.

The error lies not within the specification, but within claim 23, which is amended as discussed hereinafter in conjunction with a rejection under 35 U.S.C. 112, second paragraph.

#### **For the Claims:**

The applicant submits claims 19-23, of which claim 19 is an independent claim. This Office Action rejects claims 19-23 as discussed hereinafter. The applicant hereby amends claims 19 and 23, adds claims 24-37, and retains claims 20-22 as originally submitted. Applicant respectfully requests reconsideration.

This Office Action rejects claim 23 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which the applicant regards as the invention.

In claim 23, lines were inadvertently left in which should have been deleted during editing of the application. The

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applicant amends claim 23 to exclude these lines, render the intent of claim 23 more clear, and to support amendments to independent claim 19, from which claim 23 depends, discussed hereinafter. The applicant respectfully requests reconsideration of claim 23.

This Office Action rejects independent claim 19 under 35 U.S.C. 102(b) as being anticipated by Perlman et al., U.S. Patent No. 6,033,736 (hereinafter Perlman). This Office Action asserts that Perlman discloses a coating for stucco comprising a waterproof and breathable sealant coating over the stucco, and a water-resistant acrylic paint applied over the sealant coating.

Perlman teaches the use of an aqueous wax emulsion as a sealant for stucco [column 2, lines 15-24]. Such a wax sealant suffers from a marked tendency to re-dissolve when exposed to water, is susceptible to melting due to thermal stress, and can readily crack when subjected to vibration.

The present invention as defined in claim 19 recites a polymeric sealant containing microspheres. In a preferred embodiment, the microspheres serve as both packing and deformative bulking material. This sealant/microsphere combination serves to seal cracks, crevices, and voids in a stucco in a manner far superior to wax sealant typical of that used in Perlman. In a preferred embodiment, the polymeric sealant claimed in claim 19, once dry, is not re-dissolvable in the presence of water, does not melt in the presence of heat below the flash temperature of standard wooden building materials, and is far more tolerant of vibrational stresses than is the wax sealant of Perlman, all due to the presence of the recited polymeric sealant not disclosed in Perlman.

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There is no suggestion in Perlman to utilize a polymeric sealant rather than a wax sealant. To the contrary, Perlman goes to great pains to indicate the specific types of wax sealants that are to be used. The specificity with respect to wax teaches away from the use of a non-wax sealant. In addition, Perlman uses particulate solid wax in the specified sealant to provide bulking and filling properties. The addition of microspheres, as claimed in claim 19, is contraindicated as it would change the characteristics of the wax sealant to be outside the characteristics specifically taught by Perlman.

Perlman, therefore, specifically teaches away from a polymer sealant comprising microspheres. A suggestion that it would be obvious to one of ordinary skill in the art to use a polymeric sealant and/or microspheres is not present in the prior art of record.

The applicant has amended independent claim 19 to more specifically claim a polymeric sealant comprising microspheres. The applicant believes independent claim 19 to be allowable as amended over Perlman. The applicant respectfully requests reconsideration of independent claim 19.

This Office Action further rejects independent claim 19 under 35 U.S.C. 102(b) as being anticipated by Maekawa, U.S. Patent No. 5,548,018, (hereinafter Maekawa). This Office Action asserts that Maekawa discloses a polymeric sealant over cement, and a water-resistant acrylic paint applied over the sealant. The Office Action further asserts that, while Maekawa does not specifically teach a sealant and paint for stucco, cement in at least one form is a significant ingredient of stucco, and it would have been obvious to one of ordinary skill in the art to use the Maekawa sealant and paint for stucco.

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Maekawa teaches a polymeric sealant for use with cement. While it is true that cement is an ingredient of stucco, the properties of stucco as conventionally used are not the properties of cement. Typically, stucco structures have more brittle exterior surfaces than cement structures. As is apparent to those skilled in the art, stucco is more prone to crack, and to have finer cracks, than cement. It would therefore not be obvious to one skilled in the arts of both cement and stucco that an identical sealant would be appropriate for both surfaces.

In addition, the sealant in the present invention, as claimed in claim 19, contains microspheres. Maekawa does not teach the use of microspheres. Microspheres, in a preferred embodiment, are a bulking and filling agent distinct from other bulking and filling agents, such as sand. That is, microspheres are in and of themselves a distinct entity having distinct properties. Lacking any suggestion of any similar entities as a component or additive, it would not be obvious to one of ordinary skill in the art to add microspheres to the sealant of Maekawa inasmuch as cement does not suffer the same problems as stucco.

The applicant has amended independent claim 19 to more specifically claim a sealant containing microspheres. The applicant believes independent claim 19 to be allowable as amended over Maekawa. The applicant respectfully requests reconsideration of independent claim 19.

This Office Action rejects claims 20-22 under 35 U.S.C. 103(a) as being unpatentable over Perlman in view of Patel, U.S. Patent No. 5,356,716 (hereinafter Patel). This Office Action asserts that Patel discloses the use of a water-repellant silicate solution of aqueous sodium methyl silicate, and that

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it would have been obvious to one of ordinary skill in the art to combine Patel with Perlman to teach the present invention.

Neither Perlman nor Patel teach the use of microspheres. Inasmuch as microspheres are a distinct entity, there must be at least some suggestion for the use of microspheres in either Perlman or Patel. Since neither Perlman nor Patel suggest the use of microspheres or any microsphere-like material, there is no suggestion to include microspheres in the sealant of either Perlman or Patel.

The applicant feels that claims 20-22 are allowable as originally submitted over Perlman in view of Patel. The applicant respectfully requests reconsideration of claims 20-22.

This Office Action rejects claims 20 and 21 under 35 U.S.C. 103(a) as being unpatentable over Maekawa.

For the reasons discussed hereinbefore in conjunction with the rejection of claims 20-22 over Perlman in view of Patel, claims 20-21 also are believed to be allowable over Maekawa in re the absence of the teaching of the use of microspheres by Maekawa.

The applicant feels that claims 20-21 are allowable as originally submitted over Maekawa. The applicant respectfully requests reconsideration of claims 20-21.

In addition, the applicant hereby adds new claims 24-37. New claims 24-37 are dependent, either directly or indirectly, from independent claim 19, which is believed allowable for the reasons discussed hereinbefore. New claims 24-37 contain subject matter

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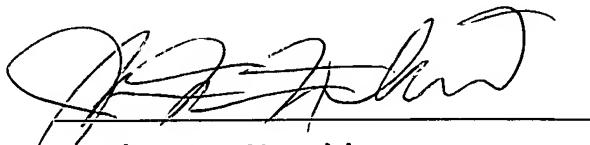
formerly presented in now withdrawn claims 1-14, so a basis for new claims 24-37 is present in the specification.

Inasmuch as the applicant believes independent claim 19 to be allowable as discussed hereinbefore, the applicant believes new claims 24-37 to be allowable by reason of dependency. The applicant respectfully requests consideration of new claims 24-37.

Accordingly, this Amendment withdraws claims 1-18 from the application. The Amendment amends claims 19 and 23. Currently amended claims 19 and 23 remain in the application and are believed to be allowable. This Amendment adds new claims 24-37, which are believed to be allowable. In addition, claims 20-22 remain in the application as originally submitted and are believed to be allowable.

The applicant believes that the foregoing amendments and remarks are fully responsive to the rejections and/or objections recited in the 15 July 2005 Office Action and that the present application is now in a condition for allowance. Accordingly, reconsideration of the present application is respectfully requested.

Respectfully submitted,



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